

MERCED SUPERIOR COURT LOCAL COURT RULES

(F). Matters arising from the UEIFSA provision of the Family Code and orders to show cause, motions, or trials in actions brought by the Local Child Support Agency under the provisions of Family Code Sections 17000 et. seq.

(G). Matters arising from Family Code §§4900-4903, Support of Adult Child(ren) or Parents.

(H). Post-dissolution judgment actions, involving omitted or reserved property issues.

(I). Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.

(J). Mediation proceedings in Guardianship actions.

(Effective July 1, 2004).

RULE 402: MOTIONS AND ORDER TO SHOW CAUSE CALENDAR

a. Calendar Management Short and Long Cause Matters

(1). Short Cause matters are those matters requiring no more than 15 minutes of the Court's time. Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Generally no live testimony is allowed in Short Cause matters pursuant to CRC 323 and *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479. Short Cause matters shall be set for hearing on Tuesdays, Thursdays or Fridays at 8:15 a.m. or on Tuesdays or Fridays at 1:30 p.m..

(2). Long Cause Matters are those matters requiring more than 15 minutes of the Court's time. The long cause calendar shall be heard on Mondays at either 8:15 a.m. or 1:30 p.m. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds 15 minutes. If both concur they shall appear in court and obtain a long cause date. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing; defer the matter to the end of the calendar if time permits, continue the matter to the next available date or order the matter off calendar.

(3). Only matters involving two self-represented parties shall be set on Wednesdays at 8:15 a.m.

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(4). All case management conferences shall be heard in chambers as set by the Court.

(5). These dates and times are subject to change. Refer to the court's website.
(Effective July 1, 2004).

RULE 403: REQUEST TO READ FILE

A party that desires that the court read a particular pleading shall make such request prior to or at the commencement of the hearing. Absent such a request the court will not review the file prior to the hearing. This is requested as a courtesy and the court will review the file as necessary to make a proper decision, regardless of compliance.
(Effective July 1, 2004).

RULE 404: NOTIFICATION OF OTHER PROCEEDINGS

Any moving or responsive papers involving children or domestic violence shall contain a statement notifying the Court of any action pending or jurisdiction being exercised by any other Court involving the same parties and/or children. Such information shall include the name and location of the court, the file number therein, the statutory basis for said action and a copy of the most recent order made in the action.
(Effective July 1, 2004).

RULE 405: TIME LIMITATIONS OF FILING MOVING PAPERS

Absent any provision in the law or an order shortening time, any declarations, or points and authorities by the moving party, including any required notice to the Local Child Support Agency, shall be served pursuant to law and filed no less than 21 Court days prior to the date of hearing. Unless good cause is shown, failure to comply with this rule may result in the refusal by the Court to consider any papers not timely filed, or the imposition of monetary sanctions on counsel, or both.
(Effective July 1, 2004).

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RULE 406: CONTINUANCES

If a motion for continuance is to be made the matter must be placed on calendar no less than five (5) Court days prior to the scheduled event along with payment of the filing fee.

(Effective July 1, 2004).

RULE 407: LACK OF APPEARANCE OR TARDINESS

(A). Failure of the moving party or attorney to be present at the calendar call, or to have informed the court staff of his/her presence in another department, may result in the matter being removed from the calendar and, if the responding party has appeared, attorney's fees and costs may be awarded to the appearing party.

(B). In the event the responding party or attorney fails to appear, the Court may continue the matter and award attorney's fees, or enter an order on the pleadings and the declaration or testimony of the moving party.

(C). If, for any reason, the attorney or client is unable to be present at the time of the calendar call, the Court and opposing party shall be notified as soon as possible in person or by phone of the reasons for, and the extent of, such delay.

(Effective July 1, 2004).

RULE 407.1: COURT CALL APPEARANCES

Except in contempt and work search orders to show cause where appearances are mandatory or unless otherwise ordered by the court, arrangements can be made through the Family Law clerk's office for an appearance by court call. Arrangements to appear by court call must be made at least 5 days prior to the date of appearance. Court call requires a fee be paid to court call unless a fee waiver is on file. Hearings on 8:15 a.m. or 1:30 p.m. calendars will be moved to 10:00 a.m. or 3:00 p.m. respectively if there is a court call request.

(Effective July 1, 2004).

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RULE 408: PRE-HEARING SETTLEMENT EFFORTS

(A). When the attorneys have informed the Court staff that they are conducting settlement, neither the attorneys nor the parties need be present at the calendar call and the matter will remain on calendar until heard, or otherwise disposed.

(B). Copies of documents, intended to be offered as part of a case in chief, shall be provided to opposing parties at least two days prior to the Court hearing or as soon as information is available. A party may not wait until the time of the hearing to "surprise" the opposing party with proffered documentary evidence, except to impeach the veracity of a party or witness. If evidence is offered at a hearing without notice, it may constitute cause for a continuance and sanctions.

(C). If a case is settled after calendar call but before the hearing, one of the attorneys shall inform the Judge or Court staff of that fact, whereupon the stipulation will be taken ahead of all contested matters. No party shall represent that a case is settled when there is "only one" issue remaining to be determined by the Court.

(Effective July 1, 2004).

RULE 409: RULES GOVERNING CUSTODY AND VISITATION ISSUES

a. General

(1). When a **Notice of Motion** or **Order to Show Cause** is filed, the Clerk will generally assign two court dates. The first date is **Orientation** and the second date will be a court hearing. Orientation is always conducted on Thursday at 12:15 p.m. and generally lasts up to 90 minutes. The clerk will assign a Mediation date at the conclusion of Orientation. Mediation days are Mondays, Wednesdays and Thursdays with the calendar commencing at 9:00 a.m.. The dates and times are subject to change. Refer to the court's website.

(2). Attendance at Orientation is **mandatory**. However, attendance may be waived if the parties have attended mediation in the last 18 months or they live more than 250 miles from Merced and they obtain an Order from the court relieving them of their obligation to attend because one or more circumstance applies. If either of these circumstances apply and a party wishes to obtain a waiver of the obligation to attend Orientation they must complete the Merced County Local form, a copy of which is

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reproduced in Appendix A attached hereto, and submit the form to the Clerk's office at least five calendar days prior to the scheduled Orientation.

(3). If Orientation has been waived (by completion of the local form and signed by the Judge) the Clerk will assign a Mediation date at Orientation. If one party is excused from attendance at Orientation, the other party is not automatically excused and must attend Orientation. A Mediation date will be assigned at the time scheduled for Orientation whether one or both parties have been excused from attending Orientation. Any party excused from attending Orientation shall be obligated to contact the Clerk's office after the scheduled Orientation date to obtain the date and time set for Mediation of the matter. Failure to do so, resulting in a failure to appear at the time Mediation is scheduled, may result in a monetary sanction being ordered against the party failing to contact the Clerk.

(4). The further court hearing will cover custody, visitation and all other issues brought up in the original Motion.

(5). Counsel shall not participate in mediation. However, counsel shall have the right to be present, and review any agreement prior to being signed by his or her client.

(6). If the parties reach an agreement at Mediation regarding custody and visitation, that agreement will be adopted by the court immediately following the mediation.

(7). If the parties do not reach an agreement at Mediation, the Mediator will make a recommendation to the court which they feel is in the best interests of the children. The recommendation will also contain a separate rationale, which will be contained in a confidential envelope subject to the same review provisions set forth in sub-section I, here below. This recommendation will be available 1 to 2 days after mediation and can be picked up at the Clerk's office for review. At the further hearing the Court will generally:

(1). Use the Mediator's recommendation as a guideline in making temporary or permanent orders; and/or

(2) Order a Merced County Family Court Services Assessment (short evaluation),

(3) Order a Merced County Family Court Services extended evaluation,

(4) Appoint minor's counsel or

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(5) At the parties' request, appoint a private evaluator to do an extended evaluation.

b. Cost of Evaluations/Minor's Counsel

(1) If a Merced County FCS Assessment is ordered, the fee, effective April 1, 2004, shall be \$550. This amount is subject to review by the court, with any changes to be posted in the Family Law clerk's office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.

(2) If a Merced County FCS Evaluation is ordered, the fee, effective April 1, 2004, shall be \$1500. This amount is subject to review by the court, with any changes to be posted in the Family Law clerk's office. Each party shall be responsible to pay one half of this amount, with the court reserving jurisdiction to reallocate the fee in future court proceedings.

(3) The following standard orders shall apply to all FCS assessments and evaluations ordered by the court:

(a) Each party will be ordered to report forthwith to the Merced County Department of Revenue and Reimbursement for payment of their one-half the fee. The department will charge a 15% payment fee if arrangements are made for payments (this additional charge will not be required if payment of the one-half is made in full). The evaluation or assessment will commence only after one-half of the full cost is made. Any balance owing is deemed Child Support for purposes of collection.

(b) The parties are ordered to make themselves and any children available for all appointments as scheduled for the evaluation or assessment, and shall promptly provide the evaluator with any documentation or information as requested. The evaluator

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may make an ex-parte request to the court for a drug testing if an issue arises regarding alleged drug use. The parties are to comply with such order as directed by the evaluator, and be responsible to make payments directly to the lab as ordered. The standard order in this regard is that the parent requesting the testing shall pay the initial cost, with the cost reimbursed by the other party if the test is positive.

(4) Unless otherwise ordered by the court, on approval of the Presiding Judge, all appointments of minor's counsel under Family Code section 3150 will be subject to the parties making arrangements for fees directly with the appointed counsel.

(5) Private evaluations will be subject to fees and arrangements made directly to the evaluator, subject to allocation by the court. The court will generally order the party requesting the private evaluation to pay the portion of the fee that exceeds the one-half amount of the cost of an FCS evaluation.

c. Filing Rationale and Recommendation/Objections/Further Hearing

(1) There will generally be no follow up hearing set if an assessment, evaluation, or minor's counsel is Ordered.

(2) The evaluator (Merced County FCS or privately retained) or minor's counsel will be directed to prepare a report and recommendation and file it with the Court. This report will be submitted in two (2) parts. The first part will be the evaluator/minor's counsel rationale which will be maintained in a confidential envelope. The second will be the evaluator/minor's counsel's recommendation.

(3) The parties and/or their attorney of record will receive only the evaluator's/minor's counsel recommendation. The confidential rationale or report shall be subject to the right of the parties to review it in the clerk's office. Counsel for the parties shall be given a copy, however they are ordered not to make additional copies and are responsible for maintaining control of the rationale or report, although they may review it with their client, unless pursuant to court order. The mediator or evaluator may

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also prepare a separate report regarding confidential statements of the minor child or children, which report shall not be reviewed by counsel or parties without a court order. If the parties wish to obtain a copy of the rationale they must complete the Merced County local form set forth in Appendix B and submit same to the clerk's office. Upon the Judge's approval of release of the rationale the parties or their attorney may review the report and release same **only** to the extent ordered by the Judge.

(4) Each party will have 20 days from the certification of mailing of the recommendation to file an objection to same. The parties shall use the Merced County local form set forth in Appendix C to set forth any objections they have to the recommendation. If no objection is timely filed by either party, the Court will adopt the recommendation as an Order of the Court.

(5) If an objection is filed, the matter will be set on the Court's calendar by the Court Clerk and the parties or their attorney of record, will be notified of same by notice sent to them by the Clerk via United States mail to their last known address indicated in the court file.

d. Minor's Counsel

(1) The appointment of counsel to represent children in Family Law cases is authorized by Family Code Section 3150.

(2) After appointment Minor's counsel shall be notified and prepare orders which shall include the statement that Minor's counsel may directly contact the parties, represented or not.

(3) No mediation shall be held after the appointment of Minor's counsel except on motion and approval of the court. After custody and visitation is decided upon a report by Minor's counsel, no further motions involving custody and/or visitation shall be held without approval of Minor's counsel. Any party, upon 10 days notice, may seek court approval to have the matter heard without Minor's counsel approval. The purpose of this rule is to encourage the parties to reach an agreement with Minor's counsel's assistance and without the need for a court hearing.

e. Disqualification of Mediator or Minor's Counsel/Conflict of Interest

(1) There is no peremptory challenge to a Mediator or Minor's counsel.

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(2) A Mediator/Minor's counsel can be disqualified for good cause. Any party wishing to challenge a Mediator or Minor's counsel for cause shall complete the Merced County local form set forth in Appendix D as soon as they first become aware of the conflict of interest or other cause which is the basis of the challenge. Same shall be submitted to the court for review and approval. Upon approval of any challenge the court will appoint an alternate Mediator or Minor's counsel for the matter.

(3) All Family Court Services staff shall disclose any **known** actual or potential conflicts of interest at the first Mediation or meeting with the parties. These conflicts shall be resolved by the Court through the procedure indicated in Rule 109 J.2 herein above or the Mediator or Minor's counsel shall recuse him or herself before Mediation/Evaluation begins or before Mediation/Evaluation continues in the case where the conflict arises during the course of the Mediation/Evaluation.

f. Mediator's Motion

Upon meeting with the parties, the Mediator has the authority to make an ex-parte request to the court seeking:

- (1) temporary Orders for the protection of the child or children involved;
- (2) a more extensive evaluation/investigation be ordered or
- (3) release of records from Child Protective Services, law enforcement agencies, medical providers for the child or any and all other reports, records, or other tangible documents previously made relating to the issues of custody and visitation. Any Order made upon the Mediator's request shall be immediately served on the parties or their attorney by the clerk's office. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made.

g. Child Advocate Motion

When the Child Advocate Program of Merced County has been appointed to supervise visits in a case, they shall have the authority to make an ex-parte request to the court seeking the termination of visits for a parent and/or the appointment of Minor's counsel for the child or children involved if they feel such a request is necessary for the protection of the child or children involved. Any Order made by the court upon such a request will be immediately served by the Clerk on the parties and/or their attorneys

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notifying them of the action taken by the court. Any party objecting to same may file an ex-parte Motion with the court seeking review and modification of any such Order made.

(Effective July 1, 2004).

RULE 410: EX PARTE ORDERS

(A). Ex parte Order to Show Cause Motions shall be presented to the Clerk of Court no later than 11:30 a.m. on the day prior to the requested hearing.

(B). No ex-parte hearing will be set unless the appropriate filing fee is paid at the time the request is made to place the matter on calendar.

(C). No ex-parte hearing will be set unless the Merced local form titled “Declaration Re: Notice Upon Ex Parte Application for Orders” (a copy of which is set forth in Appendix “E”) has been filed with the Clerk’s Office.

(D). Ordinarily, an ex parte order will not be issued unless one of the following conditions exists:

(1) Notice was given to the adverse party by at least noon on the day preceding the hearing so that adverse party has an opportunity to oppose the application by counter declarations filed with the clerk as soon as possible or to appear at the time of the hearing; or

(2) Reasonable good faith efforts were made to notify the party; or

(3) It clearly appears in the declaration that giving notice would frustrate the purpose of the proposed orders; or

(4) The applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition; or

(5) It appears by declaration that no significant burden or inconvenience will result to the adverse party.

(E). An ex parte order will be issued only if the application is accompanied by a specific declaration adequate to support its issuance. Conclusions, feelings, wishes, or fears will not be adequate to support an ex parte order.

(F). The moving party’s papers will be presented to the Judge for signature at the time of the ex-parte hearing. If, as a result of the ex-parte hearing, a further hearing is

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needed, the moving party shall pay another filing fee at the time the Order to Show Cause signed by the Judge at the ex-parte hearing is filed.

(G). If a party to a dissolution or paternity action is seeking ex-parte orders as a result of domestic violence and there is currently a Dissolution or Paternity action in this county, said request shall be filed by means of a Domestic Violence Prevention Order to Show Cause and shall use the existing case number. This does not apply to Emergency Protective Orders (EPO) that are generated by law enforcement.

(H). An application for an order seeking confirmation of sole custody for a party shall specify the duration and other circumstances justifying continued sole custody.

(I). There is an absolute duty to disclose the fact that a requested ex parte order will result in a change of status quo. Failure to disclose or misrepresentation of the facts may result in an award of sanctions.

(Effective July 1, 2004).

RULE 411: ORDER EXCLUDING FROM HOME OR STAY AWAY

(A). An application for an ex parte restraining order excluding either party from the family dwelling or the dwelling of the other, or a stay away order, causing the same result must be supported by a declaration showing:

- (1) a right to possession of the home,
- (2) the danger of immediate and serious harm specifying in detail the time and place of any past act or acts of alleged misconduct as required by Family Code §6321,
- (3) the availability of alternate housing for each party,
- (4) whether the residence involved is currently occupied by one or both parties and
- (5) if not occupied by one or both parties, contain a declaration as to when one or both parties left the residence and the reasons therefore.

If violence has taken place or seems likely, the Court encourages a spouse alleging such violence to leave the home until after a Court hearing may be held. The Court will not penalize a spouse for doing so.

(Effective July 1, 2004).